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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 RASHAD BABBS,

9 Petitioner,

10 v.

11 SCOTT FRAKES,

12 Respondent.
13

Case No. C10-5087BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION,
ISSUING CERTIFICATE OF
APPEALABILITY, AND
DENYING MOTION TO APPOINT
APPELLATE COUNSEL

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of
15 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 13) and Petitioner
16 Rashad Babbs’ motion to appoint appellate counsel (Dkt. 15).

17 On November 4, 2010, Babbs filed a petition for writ of habeas corpus challenging
18 his conviction in state court. Dkt. 1. Babbs argued that the conviction violated the Supreme
19 Court cases of *Batson v. Kentucky*, 476 U.S. 79 (1986), and *Bruton v. United States*, 391
20 U.S. 123 (1968).

21 On June 15, 2011, the Honorable J. Richard Creatura, United States Magistrate
22 Judge, issued a Report and Recommendation (“R&R”). Dkt. 13. Judge Creatura
23 recommended that the Court deny both claims and that the Court issue a Certificate of
24 Appealability for Babbs *Bruton* claim. *Id.* Babbs did not file objections.

25 On July 19, 2011, Babbs filed a motion to appoint appellate counsel. Dkt. 15. Babbs
26 claims that he can no longer afford his current counsel and that the interests of justice dictate
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28 ORDER

1 that the Court appoint appellate counsel to pursue his *Bruton* claim on appeal. *Id.*

2 With regard to the R&R, the Court has reviewed the R&R and, no objections to the
3 R&R having been filed, adopts the R&R.

4 With regard to the request for appellate counsel, the court may request an attorney to
5 represent any person unable to afford counsel. 28 U.S.C. § 1915(e)(1). The Court finds that
6 Babbs should be able to file his appeal as well as a request to appoint counsel in the court of
7 appeal. Moreover, the appellate court will be in the best position to determine whether
8 circumstances exist to appoint counsel for Babbs. Therefore, the Court denies Babbs'
9 motion to appoint appellate counsel.

10 The Court has considered the R&R, the remaining record, and does hereby find and
11 order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) A Certificate of Appealability for Babbs' *Bruton* claim is **GRANTED**;
- 14 (3) The petition is **DENIED**;
- 15 (4) Babbs' motion to appoint appellant counsel is **DENIED**; and
- 16 (5) This action is **DISMISSED**.

17 DATED this 27th day of July, 2011.

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BENJAMIN H. SETTLE
United States District Judge

ORDER